

---

**APPEALS BOARD  
UTAH LABOR COMMISSION**

**TARA T. BISHOP,**

**Petitioner,**

**vs.**

**TIMPANOGOS REGIONAL HOSPITAL  
and ZURICH AMERICAN INSURANCE  
CO.,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 06-0240**

---

Timpanogos Regional Hospital and its insurance carrier, Zurich American Insurance Co., (collectively "Timpanogos") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to Tara Bishop under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-2-801(3) of the Utah Workers' Compensation Act.

**BACKGROUND AND ISSUES PRESENTED**

Ms. Bishop allegedly contracted meningitis while working as a nurse at Timpanogos on August 19, 2002. She claims workers' compensation benefits for hypoxic brain injury, posttraumatic stress disorder, depression, anxiety, tinnitus and chronic back pain resulting from the disease or efforts to diagnose the disease.

After an evidentiary hearing, Judge La Jeunesse determined that Ms. Bishop's medical problems arose out of her employment at Timpanogos and are compensable under Utah's workers' compensation law. Judge La Jeunesse awarded temporary total disability compensation, medical benefits, and travel expenses to Ms. Bishop.

Timpanogos then filed two separate motions for review of Judge La Jeunesse's decision. In the first, Timpanogos argues it was unfairly surprised by Ms. Bishop's claim for temporary total disability compensation. Timpanogos also argues Judge La Jeunesse erred in admitting certain medical records into evidence and then relying on those records as a basis for some of his findings of fact. Finally, Timpanogos argues a medical panel should be appointed to evaluate Ms. Bishop's claim. In the second motion for review, filed eighteen months later, Timpanogos argues Ms. Bishop's claim should be reopened to consider new evidence.

**ORDER AFFIRMING ALJ'S DECISION**  
**TARA T. BISHOP**  
**PAGE 2 OF 6**

**FINDINGS OF FACT**

The Appeals Board finds the following facts material to the issues raised by Timpanogos's motion for review.

On August 19, 2002, while working as a nurse at Timpanogos, Ms. Bishop was assigned to care for Ms. Mecham, a hospital patient. Ms. Mecham developed a headache, shaking, fever and nausea, and accidentally vomited on Ms. Bishop's exposed arm. A few days later, Timpanogos informed Ms. Bishop that Ms. Mecham had meningitis and that Ms. Bishop should notify her supervisor if she experienced any symptoms.

On August 24, 2002, Ms. Bishop developed a headache and other symptoms. On August 25, 2002, her supervisor instructed her to report to the Timpanogos emergency room because her symptoms matched those of Ms. Mecham. At the emergency room Ms. Bishop underwent a spinal tap and other tests for meningitis. Over the next several days, Ms. Bishop's symptoms worsened and she returned to Timpanogos's emergency room on August 29, 2002. She was admitted into the hospital's intensive care unit and underwent another spinal tap. She then received morphine, became over-sedated, and stopped breathing for a time.

Ms. Bishop was subsequently released from the hospital. The results of her tests for meningitis were somewhat ambiguous, resulting in equivocal diagnoses by some medical experts. However, other medical experts were unequivocal in their opinion that Ms. Bishop did, in fact, suffer from some variation of meningitis. After her ordeal, Ms. Bishop was left with chronic backache from the spinal taps she had received in the hospital. She also suffered a hypoxic brain injury, post-traumatic stress disorder, depression and tinnitus. In summary, the opinions of Ms. Bishop's treating physicians and Timpanogos's own medical experts establish that Ms. Bishop's initial illness and subsequent complications were caused by her work exposure and subsequent efforts to diagnose and treat her work-related illness.

**DISCUSSION AND CONCLUSIONS OF LAW**

Timpanogos's first motion for review. Timpanogos argues it was unfairly surprised when Ms. Bishop raised a claim for temporary total disability compensation for the first time at the evidentiary hearing on September 5, 2006. However, the record shows that Ms. Bishop's pre-trial disclosures, dated July 21, 2006, notified Timpanogos that Ms. Bishop intended to pursue a claim for temporary total disability compensation. Then, on July 25, 2006, Ms. Bishop formally amended her claim to include temporary total disability compensation. Under these circumstances, the Appeals Board finds no merit in Timpanogos's claim of unfair surprise.

Timpanogos also challenges Judge La Jeunesse's admission of Ms. Mecham's medical records into evidence. Specifically, Timpanogos argues that Judge La Jeunesse erred in relying on Rule 803(4) of the Utah Rules of Evidence as a basis for admitting the records. Timpanogos also

**ORDER AFFIRMING ALJ'S DECISION**  
**TARA T. BISHOP**  
**PAGE 3 OF 6**

challenges the admission of Ms. Mecham's medical records on the grounds they constitute hearsay and lack foundation. The Appeals Board finds these arguments unpersuasive. Section 34A-2-802 of the Utah Workers' Compensation Act provides broad authority to admit and consider such records:

- (1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence . . . . The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.
- (2) The commission may receive as evidence and use of proof of any fact in dispute all evidence deemed material and relevant . . . .

Because the records in question are "material and relevant" to this proceeding, the Appeals Board concludes Judge La Jeunesse acted within his broad authority under § 34A-2-802 to admit the records into evidence.

Timpanogos also claims to have been surprised by Ms. Bishop's submission of Ms. Mecham's medical records, and to have been denied a fair opportunity to evaluate and address those records. However, Ms. Bishop informed Timpanogos in her prehearing disclosure that she intended to submit the Mecham records into evidence. Furthermore, Judge La Jeunesse allowed Timpanogos 10 days after the evidentiary hearing to examine and respond to the records. Under these circumstances, the Appeals Board concludes that Timpanogos was not surprised by the Mecham records nor denied a fair opportunity to evaluate and respond to them.

Timpanogos further argues that Judge La Jeunesse's reliance upon the Mecham records violates the "residuum rule." In summary, this rule requires that findings of fact must be supported by a residuum of legally competent evidence and cannot be based entirely on hearsay evidence. Timpanogos contends that the Mecham records are hearsay and constitute the only evidence that Ms. Mecham had meningitis. Thus, according to Timpanogos, any finding of fact that Ms. Mecham had meningitis would run afoul of the residuum rule.

In considering this argument, the Appeals Board notes that it is Ms. Bishop's condition that is at issue in this case. The Mecham records are relevant only to the extent they support or detract from the persuasive force of the various medical opinions assessing Ms. Bishop's condition. On that question, the evidentiary record includes several medical opinions that Ms. Bishop suffered from meningitis. The record also contains the opinion of Dr. Chung, Timpanogos's own medical consultant, who states that Ms. Bishop's medical problems "should be considered industrial." Timpanogos does not argue that the foregoing medical opinions that directly address Ms. Bishop's medical problems are inadmissible or incompetent, and the Appeals Board views those opinions as providing a sufficient evidentiary basis to find that Ms. Bishop suffered from work-related meningitis and complications thereof.

**ORDER AFFIRMING ALJ'S DECISION**  
**TARA T. BISHOP**  
**PAGE 4 OF 6**

Finally, Timpanogos argues the Appeals Board should refer Ms. Bishop's claim to a medical panel pursuant to the Commission's Rule R602-2-2.A. This rule requires appointment of a medical panel when there are "medical expenses in controversy amounting to more than \$10,000." Timpanogos argues that such a controversy over medical expenses exists in this case because, if Ms. Bishop is found to be entitled to workers' compensation benefits, those benefits will include payment of her medical expenses, which expenses exceed \$10,000.

This argument misinterprets the Commission's rule. By referencing "medical expenses in controversy," the rule addresses situations where the parties disagree about the necessity or reasonable cost of a particular medical treatment for a work-related injury or illness. In this case, it is not the necessity or cost of Ms. Bishop's medical care that is in dispute, but rather, whether her claim is compensable at all under the workers' compensation system. The foregoing rule does not require appointment of a medical panel under these circumstances. The Appeals Board therefore denies Timpanogos's request for appointment of a medical panel.

Timpanogos's second motion for review. In its second motion for review, Timpanogos asks the Appeals Board to reopen the evidentiary hearing on Ms. Bishop's claim so that additional evidence can be submitted regarding the validity of her diagnosis of meningitis. This second motion was filed 18 months after the statutory 30-day period for filing such a request had ended. Timpanogos argues that it should be excused from the 30-day filing requirement and the Appeals Board should consider the merits of Timpanogos's argument pursuant to the Appeals Board's continuing jurisdiction over this workers' compensation claim.

The Appeals Board recognizes it has broad continuing jurisdiction over workers' compensation claims in order to correct mistakes to protect the parties' substantive rights and avoid inadequate or excessive awards. The Appeals Board has, therefore, carefully considered Timpanogos's argument and the evidence it has proffered to support that argument. In summary, Judge La Jeunesse found that Ms. Bishop suffered from work-related meningitis. Timpanogos has now submitted excerpts from a deposition that Dr. Abolnik, one of Ms. Bishop's treating physicians, gave in connection with another legal proceeding. In that deposition testimony, Dr. Abolnik speculated it was possible that Ms. Bishop actually had Rocky Mountain spotted fever, rather than meningitis. On this basis, Timpanogos argues that Ms. Bishop's workers' compensation claim should be reopened to allow further evidence on this alternative diagnosis.

As already noted above, the medical evidence that was submitted at the hearing on September 5, 2006, establishes that Ms. Bishop suffered from meningitis. While Dr. Abolnik's more recent deposition testimony raises the possibility that Ms. Bishop had Rocky Mountain spotted fever, that testimony is ambiguous and equivocal. Timpanogos has presented no additional tests, studies or opinions to further support Dr. Abolnik's speculation. After due consideration, the Appeals Board finds the proffered evidence to be unreasonably late and too insubstantial to warrant reopening the evidentiary proceedings on Ms. Bishop's claim.

**ORDER AFFIRMING ALJ'S DECISION**  
**TARA T. BISHOP**  
**PAGE 5 OF 6**

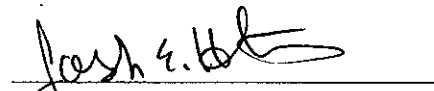
**ORDER**

The Appeals Board hereby affirms Judge La Jeunesse's decision. It is so ordered.

Dated this 22<sup>nd</sup> day of January, 2010.

  
Colleen S. Colton, Chair

  
Patricia S. Drawe

  
Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.